IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

FAO.No. 1 of 2007()

AGAINST THE ORDER DATED 20/11/2006 IN IA.983/05 IN
OS.98/2003 OF SUB COURT, CHERTHALA

APPELLANTS/PETITIONER/DEFENDANT:

SUVARNA CHITTY FUND,
POOCHAKKAL, REPRESENTED BY ITS PARTNER,
VINCENT, S/O. JOHN,ANCHUTHARAYIL VEEDU,PANAVALLY.

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENTS: COUNTER PETITIONER/PLAINTIFFS:

STAR SHIP EXPORT,
PEEVEES BUILDINGS, EDAKOCHI, REPRESENTED BY ITS
MANAGING PARTNER, V.GEORGE JOSEPH, S/O.V.I.JOSEPH,
VADAKKEDATHU VEEDU, MUNDANVELI, KOCHI.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 12/2/27, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

I.A.NO.30/2007 IN F.A.O.NO.1/2007

DISMISSED

SD/- KURIAN JOSEPH, JUDGE

12/2/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

ahz/

KURIAN JOSEPH & K.T.SANKARAN, JJ.

F.A.O. NO. 1 OF 2007

Dated this the 12th day of February, 2007

JUDGMENT

Kurian Joseph, J.

This appeal is preferred against the order dated 20.11.2006 in I.A.No.983 of 2005 in O.S.No.98 of 2003, on the file of the Court of the Subordinate Judge, Cherthala. It is the contention of the appellant that I.A.No.983 of 2005 was filed for setting aside the exparte decree dated 23.9.2005. Learned counsel for the respondent submits that the application is liable to be dismissed, considering on merits also, since on an earlier occasion also the similar prayer was rejected by order in I.A.No.888 of 2004. Be that as it may, the order under appeal reads only as follows:

> "Petitioner prays. Oral prayer rejected, Petitioner called absent. Petition dismissed."

We are afraid that the court below has not properly exercised the jurisdiction vested in the Court while considering the application for setting aside the

exparte decree. Therefore, without expressing any opinion on the merits of the case and without expressing any further observation on the manner in which the order is passed, we set aside the order under appeal with a direction to the court below to consider I.A.No.983 of 2005 on merits. This shall be done within a period of one month from the date of production of a copy of this judgment by either party.

The F.A.O is allowed.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

ahz/